

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ERIC JOHNSON,  
  
Petitioner,  
  
v.  
  
SECRETARY OF CORRECTIONS,  
  
Respondent.

No. 1:21-cv-01560-JLT-SAB-HC

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS, DIRECTING CLERK OF COURT  
TO CLOSE CASE, AND DECLINING TO  
ISSUE CERTIFICATE OF APPEALABILITY

(Doc. 6)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 29, 2021, the magistrate judge issued findings and recommendations recommending that the petition for writ of habeas corpus be as untimely. (Doc. 6.) The findings and recommendations were served petitioner and contained notice that any objections were to be filed within 30 days of the date of service of the findings and recommendations. On January 12, 2022, petitioner filed timely objections. (Doc. 9.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including petitioner's objections, the Court concludes that the findings and recommendation are supported by the record and proper analysis. Petitioner's objections repeat arguments that were properly rejected in the

1 findings and recommendations.

2 Having found that petitioner is not entitled to habeas relief, the Court now turns to  
3 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus  
4 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only  
5 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C.  
6 § 2253. Where, as here, the court denies habeas relief on procedural grounds without reaching  
7 the underlying constitutional claims, the court should issue a certificate of appealability "if jurists  
8 of reason would find it debatable whether the petition states a valid claim of the denial of a  
9 constitutional right and that jurists of reason would find it debatable whether the district court was  
10 correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). "Where a plain  
11 procedural bar is present and the district court is correct to invoke it to dispose of the case, a  
12 reasonable jurist could not conclude either that the district court erred in dismissing the petition or  
13 that the petitioner should be allowed to proceed further." *Id.*

14 In the present case, the Court finds that reasonable jurists would not find the Court's  
15 determination that the petition should be dismissed debatable or wrong, or that petitioner should  
16 be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability.  
17 Accordingly,

- 18 1. The findings and recommendations issued on December 29, 2021 (Doc. 6) are adopted  
19 in full.
- 20 2. The petition for writ of habeas corpus is dismissed.
- 21 3. The Clerk of Court is directed to close the case; and
- 22 4. The Court declines to issue a certificate of appealability.

23  
24 IT IS SO ORDERED.

25 Dated: **February 15, 2022**

  
UNITED STATES DISTRICT JUDGE